

Message Text

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C O N F I D E N T I A L SAN JOSE 5973

E.O. 11652: GDS
TAGS: SHUM, CS, NU
SUBJECT: HUMAN RIGHTS: LIANA BENAVIDES

REF: (A) SAN JOSE 5919, (B) SAN JOSE 5710, (C) STATE 289847,
(D) MANAGUA 5542 (E) MANAGUA 5798

1. SUMMARY: THE NICARAGUAN MILITARY TRIBUNAL HEARING ON BENAVIDES CASE CALLED A FARCE AND A MISCARRIAGE OF JUSTICE BY COSTA RICAN ATTENDEES. MS. BENAVIDES WILL BE FREED SHORTLY, ACCORDING TO HER DEFENSE ATTORNEY. COSTA RICAN NATIONAL ASSEMBLY IS REFRAINING FROM TAKING PUBLIC ACTION NOW FOR FEAR OF JEOPARDIZING MS. BENAVIDES, BUT IS RAISING MATTER WTH PRESIDENT ODUBER. END SUMMARY.

2. PRO GOVERNMENT DAILY EXCELSIOR, DECEMBER 19 HEADLINED REMARKS MADE BY LIC. ARTURO FOURNIER ONE OF FOUR COSTA RICANS WHO ATTENDED OPENING SESSION OF NICARAGUAN MILITARY TRIBUNAL HEARING ON BENAVIDES CASE (OPPOSITION DEPUTY RODOLFA PIZA, FORMER SUPERIOR COURT JUDGE MARIO AURELIO ODIO, AND MS. BENAVIDES' BROTHER EVELIO WERE THE OTHER THREE). FOURNIER CALLED THE TRIAL A FARCE IN WHICH THE MOST ELEMENTARY LAWS AND PENAL RIGHTS ARE NOT RESPECTED.

3. A NUMBER OF IRREGULARITIES WERE CITED BY FOURNIER. HE
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STATED THAT THE TRIBUNAL:

--HAS NO JURISDICTION UNDER THE NICARAGUAN CONSTITUTION TO TRY
THE 111 PEOPLE BEING CHARGED;

--IS APPLYING MILITARY CODE TO CIVILIANS FOR CIVIL OFFENSES,

WHICH HE SAID, IS ALSO ILLEGAL UNDER THE NICARAGUAN CONSTITUTION;

--IS USING A PROCEDURE THAT VIOLATES THE NICARAGUAN MILITARY CODE (THAT THE 76 PEOPLE BEING TRIED IN ABSENTIA CANNOT BE TRIED TOGETHER WITH THOSE 35 PHYSICALLY PRESENT).

FOURNIER ALSO DECLARED THAT HUMAN RIGHTS ARE NOT BEING RESPECTED IN THIS CASE.

4. ON DECEMBER 19 A SOLIDARITY MARCH FOLLOWED BY A DEMONSTRATION FOR MS. BENAVIDES WAS HELD IN SAN JOSE'S CENTRAL PARK. TURNOUT WAS SMALL. AMONG THE SPEAKERS WAS ONE OF MS. BENAVIDES' LAWYERS, MS. BENAVIDES' MOTHER, AND DEPUTY PIZA. THE LAWYER, ROBERTO ARGUELLO HURTADO, PREDICTED IN AN INTERVIEW WITH LEADING DAILY LA NACION THAT MS. BENAVIDES WILL BE RELEASED FROM PRISON SHORTLY.

5. ARGUELLO'S VIEW WAS ECHOED BY DEPUTY PIZA. PIZA TOLD EMBOFF HE BELIEVES A GUILTY VERDICT IS INEVITABLE BUT IT IS PROBABLE MS. BENAVIDES WILL BE SENTENCED IN A MANNER THAT WILL INSURE HER EARLY RELEASE FROM PRISON. LIKE ARGUELLO, PIZA DID NOT THINK THAT THE VERDICT WILL BE RENDERED BEFORE CHRISTMAS.

6. PIZA REPORTED HIS FINDINGS TO COLLEAGUES IN THE NATIONAL ASSEMBLY AFTERNOON DECEMBER 16. HIS CONCLUSIONS WERE SIMILAR TO THOSE OF FOURNIER CONCERNING THE LEGAL IRREGULARITIES AND LACK OF RESPECT FOR HUMAN RIGHTS. HE SAID THAT THE GENERAL CONSENSUS AMONG THE DEPUTIES WAS NOT TO BRING THE MATTER UP IN PLENARY SESSION FOR THE MOMENT; THEY FEAR PUBLICITY WOULD HURT MS. CONFIDENTIAL

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BENAVIDES' CHANCES BEFORE THE TRIBUNAL. HOWEVER, THE ASSEMBLY WANTS TO DO SOMETHING. IT WAS DECIDED THAT PLN LEGISLATIVE LEADERS CARRO AND SOLEY WILL DISCUSS THE MATTER WITH PRESIDENT ODUBER.

7. COMMENT: THE COSTA RICAN DELEGATION THAT WENT TO MANAGUA IS A HIGHLY RESPECTED GROUP OF POLITICAL MODERATES. FOURNIER IS NEPHEW OF GONZALO FACIO AND COMES FROM ONE OF COSTA RICA'S MOST PRESTIGIOUS LEGAL FAMILIES. ODIO IS COSTA RICA'S FOREMOST PENALIST. PIZA, A WELL-KNOWN LAWYER AND LEGISLATOR, IS CONSIDERED TO BE THE ASSEMBLY'S PENAL LAW EXPERT. THEIR FINDINGS WILL THUS BE RENDERED ALL DUE RESPECT HERE. COMBINING THEM WITH COSTA RICA'S ANTIPATHY TOWARD MILITARY REGIMES (PARTICULARLY SOMOZA'S) COSTA RICANS OF ALL POLITICAL STRIPES TEND TO BELIEVE THAT THE BENAVIDES CASE IS JUST WHAT THESE LEADING COSTA RICANS CLAIM IT TO BE.

8. IT SHOULD ALSO BE NOTED THAT IN THE CURRENT WAVE OF PUBLICITY ABOUT THIS CASE FEW COSTA RICANS ARE THINKING ABOUT OR CONCERNED

WITH THE QUESTION OF WHETHER MS. BENAVIDES VIOLATED NICARAGUAN
LAW. MANY -- INCLUDING THE GOCR -- DID DURING THE EARLY DAYS
OF MS. BENAVIDES INCARCERATION. HOWEVER, THE LENGTHY PERIOD OF
TIME THAT THIS CASE HAS DRAGGED ON, THE ALLEGED HUMAN RIGHT
VIOLATIONS, AND THE PERCEIVED PROCEDURAL IRREGULARITIES HAVE
RECEIVED ALL THE FOCUS HERE IN RECENT MONTHS. TODMAN

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